

ALEX G. TSE (CABN 152348)
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	CR-18-00258-EJD
)	
Plaintiff,)	JOINT STIPULATION REGARDING
)	SCHEDULING OF MOTION HEARING AND
v.)	STATUS CONFERENCE; [PROPOSED] ORDER
)	
ELIZABETH HOLMES and)	
RAMESH "SUNNY" BALWANI,)	
)	
Defendants.)	
)	

On July 19, 2018, the Court set a status conference in this case for October 1, 2018, at 1:30 p.m. (Dkt. No. 30). On September 7, 2018, Defendants filed a Motion for Order Directing the Government to Cease and Desist Post-Indictment Use of Grand Jury Process to Obtain Discovery. (Dkt. No. 40). The Court has indicated that Defendants' motion should be heard by the Magistrate Judge assigned to this case, and that the motion should be heard before the next status conference in the case. In order to allow the government sufficient time to respond to that motion, and to allow the Magistrate Judge sufficient time to evaluate the parties' arguments, the parties are requesting a brief continuance. The parties understand that the Court is available on October 12, 2018, at 10:00 a.m. for a continued status

1 conference.

2 Accordingly, the parties hereby stipulate that Defendants' motion will be referred to the
3 Magistrate Judge for hearing on October 11, 2018, or as close to that date as that Court's schedule
4 permits.¹ The parties stipulate that the government's opposition to Defendants' motion shall be filed no
5 later than September 24, 2018, and that Defendants' reply in support of the motion shall be filed no later
6 than October 1, 2018. The government agrees that, pending a final decision on Defendants' motion by
7 this Court, the government trial team will not review any documents produced by Theranos after
8 September 7, 2018 pursuant to grand jury subpoena.²

9 The parties further stipulate and jointly request that the Court continue the status conference
10 currently set for October 1, 2018, to October 12, 2018, at 10:00 a.m. in order to allow the Magistrate
11 Judge to hear Defendants' pending motion.

12 The parties also stipulate and agree that the time between October 1, 2018 and October 12, 2018
13 is excludable from the Speedy Trial Act based upon counsel's need to effectively prepare by reviewing
14 discovery materials provided by the government. The parties further agree that the failure to grant the
15 requested continuance would unreasonably deny defense counsel reasonable time necessary for effective
16 preparation, taking into account the exercise of due diligence. The parties agree that the ends of justice
17 served by granting the requested continuance outweigh the best interest of the public, and the defendant

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26 ¹ Counsel for Mr. Balwani is unavailable on October 9 and 10, 2018.

27 ² The defense has requested that the government not seek production of documents pursuant to
28 the grand jury subpoena until the motion is finally resolved. The government's position is that it may
take possession of such documents but not have the government's trial team review them pending
resolution. In the event the government takes possession prior to final resolution of the motion, the
defense reserves all rights.

1 in a speedy trial and the prompt disposition of criminal cases. Finally, the parties agree that this time
2 period is automatically excluded in light of the motion filed on September 7, 2018 (Dkt. No. 40). 18
3 U.S.C. § 3161.

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5 DATED: September 12, 2018

Respectfully submitted,

6 ALEX G. TSE
United States Attorney

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9 /s/
JEFF SCHENK
10 JOHN C. BOSTIC
ROBERT S. LEACH
Assistant United States Attorneys

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13 DATED: September 12, 2018

14 /s/
KEVIN DOWNEY
15 LANCE WADE
Attorneys for Elizabeth Holmes

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17
18 DATED: September 12, 2018

19 /s/
JEFFREY B. COOPERSMITH
20 MARK N. BARTLETT
Attorneys for Ramesh "Sunny"
21 Balwani

[PROPOSED] ORDER

Based upon the stipulation of the parties, and for good cause shown, the Court HEREBY ORDERS that the status hearing currently scheduled for October 1, 2018, is continued to October 12, 2018, at 10:00 a.m. The Court FURTHER ORDERS that the time between October 1, 2018, and October 12, 2018, is excluded under the Speedy Trial Act, 18 U.S.C. § 3161. The Court finds, under 18 U.S.C. § 3161(h)(7)(A), that the failure to grant the requested continuance would unreasonably deny each defense counsel reasonable time necessary for effective preparation, taking into account the exercise of due diligence. Furthermore, the Court finds that the ends of justice served by granting the requested continuance outweigh the best interest of the public and the defendant in a speedy trial and in the prompt disposition of criminal cases. The Court also finds that this time period is automatically excluded under 18 U.S.C. § 3161(h)(1)(D) in light of the motion filed on September 7, 2018 (Dkt. No. 40). The Court therefore concludes that this exclusion of time should be made under 18 U.S.C. § 3161.

The Court FURTHER ORDERS that Defendants' Motion for Order Directing the Government to Cease and Desist Post-Indictment Use of Grand Jury Process to Obtain Discovery (Dkt. No. 40) is hereby referred to Magistrate Judge Susan van Keulen, to be heard on October 11, 2018, or as near to that date as that court's schedule permits. Defendants shall re-notice the motion accordingly. The government's opposition to Defendants' motion shall be filed no later than September 24, 2018. Defendants' reply in support of the motion shall be filed no later than October 1, 2018.

IT IS SO ORDERED.

DATED: _____

HON. EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE